

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



December 20, 2001

Regulation Packages 0600-14

CDSS MANUAL LETTER NO. CCL-01-10

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 8, RESIDENTIAL CARE FACILITIES FOR THE ELDERLY

Regulation Package #0600-14**Effective 6/29/01****Sections 87101, 87218, 87224, 87230, 87233, 87234, 87235, 87340 and 87341**

Assembly Bill (AB) 396, Chapter 709, Statutes of 1992 enacted a new fee structure for community care facilities. It replaced renewal fees with annual fees. As a result, licenses issued by the Department no longer have an expiration date, they are perpetual. Renewal licenses are no longer necessary and are not issued. These proposed amendments repeal distinctions made between "initial" and "renewal" licenses; references to terms of licensure, to renewal applications, renewal fees, and renewal licenses; and replace references to "renewal" with "annual" when appropriate. Specifically, the regulations make nonsubstantive revisions to current regulations by amendment, repeal, or by making other minor revisions relating to the renewal process, and by replacing the term "renewal" with "annual" as appropriate. Various sections have also been renumbered for consistency.

Since these regulations were nonsubstantive they did not require a public hearing.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-01-09. The latest prior manual letter containing Residential Care Facilities for the Elderly changes was Manual Letter No. CCL-01-06.

<u>Page(s)</u>	<u>Replace(s)</u>
8.2 and 9	Pages 8.2 and 9
29 and 30	Pages 29 and 30
33	Page 33
46 and 47	Pages 46 and 47
54 thru 57	Pages 54 thru 57
60 thru 61	Pages 60 thru 61

Attachment

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87101 **DEFINITIONS** (Continued)

87101

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"Department" means the State Department of Social Services.

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- (6) Dietitian. "Dietitian" means a person who is eligible for registration by the American Dietetic Association.
- (7) Director. "Director" is defined in Health and Safety Code, Section 1569.2(c).

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"Director" means the Director of the State Department of Social Services.

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- (8) Do-Not-Resuscitate (DNR) Order. ADo-Not-Resuscitate Order means the order of the resident=s physician to alert appropriately skilled professionals and prehospital emergency medical services personnel to the resident=s wish to forego resuscitative measures in the event of the resident=s cardiac or respiratory arrest.
 - (9) Documentation. "Documentation" means written supportive information including but not limited to the Licensing Report (Form LIC 809).
- (e)
- (1) Egress Alert Device. AEgress Alert Device means a wrist band or other device which may be worn by a resident or carried on a resident=s person, which triggers a visual or auditory alarm when the resident leaves the facility building or grounds.
 - (2) Elderly Person. "Elderly Person" means, for purposes of admission into a residential care facility for the elderly, a person who is sixty (60) years of age or older.
 - (3) Emergency Approval to Operate. "Emergency Approval to Operate" (EAO) means a temporary approval to operate a facility for no more than 60 days pending the issuance or denial of a license by the licensing agency.
 - (4) Evaluator. "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department including any officer, employee or agent of a county or other public agency authorized by contract to license community care facilities.

87101 DEFINITIONS (Continued)**87101**

- (5) Evidence of Licensee's Death. "Evidence of Licensee's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary, or a letter from the attending physician or coroner's office verifying the death of the licensee.
- (6) Exception. "Exception" means a variance to a specific regulation based on the unique needs or circumstances of a specific resident or staff person. Requests for exceptions are made to the licensing agency by an applicant or licensee. They may be granted for a particular facility, resident or staff person, but cannot be transferred or applied to other individuals.
- (7) Existing Facility. "Existing Facility" means any facility operating under a ~~valid license~~ on the date of application for a ~~new license~~.
- (f) (1) Facility Hospice Care Waiver. A Facility Hospice Care Waiver means a waiver from the limitation on retention of residents who require more care and supervision than other residents and residents who are bedridden other than for a temporary illness. The Hospice Care Waiver granted by the Department will permit the retention in a facility of a designated maximum number of terminally ill residents who are receiving hospice services from a hospice agency. The Facility Hospice Care Waiver will apply only to those residents who are receiving hospice care in compliance with a hospice care plan meeting the requirements of Section 87716.
- (g) (1) Guardian. "Guardian" means a person appointed by the Superior Court pursuant to the provisions of Section 1500 et seq. of the Probate Code to care for the person, or person and estate, of another.
- (h) (1) Healing wounds include cuts, stage one and two dermal ulcers as diagnosed by a physician, and incisions that are being treated by an appropriate skilled professional with the affected area returning to its normal state. They may involve breaking or laceration of the skin and usually damage to the underlying tissues.
- (2) Health Care Provider. A Health Care Provider means those persons described in Probate Code Section 4615: A person who is licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession.
- (3) Health Care Surrogate Decision Maker. A Health Care Surrogate Decision Maker means an individual who participates in health care decision making on behalf of an incapacitated resident. Health care surrogate decision maker may be formally appointed (e.g., by the resident in a Durable Power of Attorney for Health Care or by a court in a conservatorship proceeding) or, in the absence of a formal appointment, may be recognized by virtue of a relationship with the resident (e.g., the resident=s next of kin). The licensee or any staff member of the facility shall not be appointed health care surrogate decision maker.

Article 3. Application Procedures

87218 APPLICATION FOR LICENSE**87218**

- (a) Any individual, firm, partnership, association, corporation or governmental entity desiring to obtain a license shall file with the licensing agency a verified application on forms furnished by the licensing agency. The licensee shall cooperate with the licensing agency in providing verification and/or documentation as requested by the licensing agency. The application and supporting documents shall contain the following:
- (1) Name or proposed name and address of facility.
 - (2) Name and address of the applicant and documentation verifying completion by the applicant of certification requirements as specified in Section 87564.2.
 - (A) This section shall apply to all applications for license, unless the applicant has a current license for another residential care facility for the elderly which was initially licensed prior to July 1, 1989 or has successfully completed an approved certification program within the prior five years.
 - (B) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or person serving in a like capacity or the designated administrator of the facility shall meet the requirements of this section.
 - (3) If the applicant is a partnership, the name, signature and principal business address of each partner.
 - (4) If the applicant is a corporation or association, the name, title and principal business address of each officer, executive director, and member of the governing board. The application shall be signed by the chief executive officer or authorized representative. In addition, a copy of the Articles of Incorporation, Constitution and By-laws, and the name and address of each person owning more than 10 percent of stock in the corporation shall be provided.
 - (5) If the applicant is a corporation, each member of the board of directors, executive director, and any officer shall list the name of all facilities which they have been licensed to operate, employed by or a member of the board of the directors, executive director or an officer.
 - (6) Procedures as required pursuant to Section 1569.175 of the Health and Safety Code.

87218 APPLICATION FOR LICENSE (Continued)

87218

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(A) Health and Safety Code Section 1569.175 provides:

- (a) In addition to any other requirements of this chapter, any residential care facility for the elderly providing residential care for six or fewer persons at which the owner does not reside shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee, or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a response of action taken or a reason why no action needs to be taken.
- (b) In order to assure the opportunity for complaints to be made directly to the owner, licensee, or person designated by the owner or licensee, and to provide the opportunity for the owner, licensee, or person designated by the owner or licensee to meet residents and learn of problems in the neighborhood, any facility with a nonresident owner shall establish a fixed time on a weekly basis when the owner, licensee, or person designated by the owner or licensee will be present.
- (c) Facilities with nonresident owners shall establish procedures to comply with the requirements of this section on or before July 1, 1987.

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- (7) Name and address of owner of facility premises if applicant is leasing or renting.
- (8) The category of facility to be operated.
- (9) Maximum number to be served.
- (10) The name, residence and mailing addresses of the facility administrator, a description of the administrator's background and qualifications, and documentation verifying the required education and administrator certification.

87218 APPLICATION FOR LICENSE (Continued) 87218

- (15) Information concerning insurance carried by the applicant relating to the operation of the facility.
 - (16) Plan of Operation as specified in Section 87222.
 - (17) The fee for processing the application for the requested capacity as specified in Section 87224.
 - (18) Name, address and telephone number of the city or county fire department, the district providing fire protection services, or the State Fire Marshal's Office having jurisdiction in the area where the facility is located.
 - (19) Such other information as may be required by the licensing agency for the proper administration and enforcement of the licensing law and regulations.
- (b) An application shall be filed with the licensing agency which serves the area in which the facility is located.

NOTE: Authority cited: Sections 1569.18, 1569.23(d), 1569.30, and 1569.616(j), Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.5, 1569.10, 1569.15, 1569.151, 1569.1515(a), 1569.16, 1569.17, 1569.175, 1569.18, ~~1569.185~~, 1569.19, 1569.20, 1569.21, 1569.22, 1569.23, 1569.24, 1569.30, 1569.312, 1569.45, 1569.60, 1569.615, 1569.616, and 1569.62, Health and Safety Code.

87219 CRIMINAL RECORD CLEARANCE**87219**

- (a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1569.17 and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.
- (b) Prior to the Department issuing a license, the applicant, administrator and any adults other than a client, residing in the facility shall have a California criminal record clearance or exemption.

87219 CRIMINAL RECORD CLEARANCE (Continued)

87219

HANDBOOK BEGINS HERE

- (1) Section 1569.17(a) of the Health and Safety Code provides in part:

Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5 subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information.

- (A) If the California Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).
- (B) If the California Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the California Department of Social Services shall cease processing the application until the conclusion of the trial.
- (C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the California Department of Social Services with a statement of that fact.
- (D) If the California Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).
- (E) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a).

- (2) Section 1569.17(b) of the Health and Safety Code provides in part:

In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

HANDBOOK CONTINUES

87224 APPLICATION/ANNUAL PROCESSING FEES

87224

- (a) An applicant or licensee shall be charged application and annual fees as specified in Health and Safety Code Section 1569.185.

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Health and Safety Code Section 1569.185 provides that the fee charged shall be as follows:

<u>Capacity</u>	<u>Original Application</u>	<u>Annual</u>
1 - 6	\$300	\$300
7 - 15	\$450	\$450
16 - 49	\$600	\$600
50 +	\$750	\$750

HANDBOOK ENDS HERE

- (b) The ~~annual fee shall~~ be according to existing licensed capacity unless the licensee requests a lower or higher capacity.
- (c) No additional fee shall be charged when the licensee requests an increase in capacity ~~between annual anniversary dates~~.
- (d) When a licensee moves a facility from one location to another, the ~~application processing~~ fee shall be as follows:

<u>Capacity</u>	<u>Relocation</u>
1 - 6	\$ 50
7 - 15	75
16 - 49	100
50 +	125

87224 APPLICATION/ANNUAL PROCESSING FEES (Continued)**87224**

(1) To receive the reduced fee the following shall apply:

- (A) The licensee shall have notified the licensing agency before actually relocating the facility.
- (B) The categorical type of facility shall remain the same when relocating the facility.
- (C) The fee shall be by requested capacity at the new location.

(e) The application annual processing fee shall be nonrefundable ~~except as provided in Government Code Section 15378.~~

NOTE: Authority cited: ~~Section 1569.30~~, Health and Safety Code. Reference: Sections ~~1569.185~~ and 1569.19, Health and Safety Code.

87225 COMMINGLING OF MONEY**87225**

Money and valuables of residents entrusted to the licensee of one community care facility licensed under a particular license number shall not be commingled with those of another residential care facility for the elderly of a different license number, regardless of joint ownership.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1530, 1531, 1560, and 1561, Health and Safety Code.

87226 BONDING**87226**

(a) Each licensee, other than a county, who is entrusted to safeguard resident cash resources, shall file or have on file with the licensing agency a copy of a bond issued by a surety company to the State of California as principal.

87228 APPLICATION REVIEW (Continued)

87228

- (2) "Application was denied within the last year" as specified in Health and Safety Code Section 1569.16(b) shall include initial or renewal applications.
- (3) If cessation of review occurs, the application shall be returned to the applicant. It shall be the responsibility of the applicant to request resumption of review as specified in Health and Safety Code Section 1569.16.
- (4) The application/renewal processing fee shall be non-refundable as specified in Section 87224(e).

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.16, 1569.17, 1569.20, and 1569.205, Health and Safety Code.

87229 CAPACITY

87229

- (a) A license shall be issued for a specific capacity which shall be the maximum number of residents which can be provided care at any given time. The capacity shall be exclusive of any members of the licensee's own family who reside at the facility. However, the licensing agency shall consider the presence of other family members or other persons who reside in the facility in determining capacity in order to ensure and promote proper living arrangements for both the licensee's family and the residents and to ensure the provision of adequate care and supervision for the residents.
- (b) The number of persons that the facility is licensed to admit shall be determined on the basis of the application review by the licensing agency which shall consider:
 - (1) Physical energy and skills of the licensee as it relates to their ability to meet the needs of the residents.
 - (2) Any other household members who may reside at the facility and their individual needs.
 - (3) Physical features of the facility, such as available living space, which are necessary in order to comply with regulations.
 - (4) Number of available staff to meet the care needs of the residents.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.2, 1569.31 and 1569.312, Health and Safety Code.

87230 WITHDRAWAL OF APPLICATION**87230**

- (a) The applicant may withdraw an application. However, unless the licensing agency consents in writing to such withdrawal, the Department or licensing agency shall not be deprived of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.
- (b) The fee for processing the application shall be forfeited.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1569.185, 1569.20, 1569.22, 1569.30, 1569.50, 1569.51 and 1569.52, Health and Safety Code.

87231 PROVISIONAL LICENSE**87231**

- (a) The licensing agency may issue a provisional license to an applicant who has submitted a completed application for an initial license if the licensing agency determines that there are no life safety risks, that the facility is in substantial compliance, as defined in Section 87101s.(6), with applicable law and regulations, and an immediate need for licensure exists as defined in Section 87101i.(1).
 - (1) A provisional license shall not be issued as specified in Health and Safety Code Section 1569.1515(b).

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- (A) Health and Safety Code Section 1569.1515(b) provides:

"(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1569.16 and 1569.59."

HANDBOOK ENDS HERE

- (b) The capacity of a provisional license shall be limited to the number of residents for whom immediate need has been established, or the capacity established for the specific facility, whichever is less.

87231 PROVISIONAL LICENSE (Continued)**87231**

- (c) A provisional license shall not be renewable and shall terminate on the date specified on the license, or upon denial of the application, whichever is earlier.
- (1) A provisional license may be issued for a maximum of six (6) months when the licensing agency determines that full compliance with licensing regulations will be achieved within that time period.
- (2) A provisional license may be issued for a maximum of twelve (12) months when the licensing agency determines, at the time of application, that more than six (6) months is required to achieve full compliance with licensing regulations due to circumstances beyond the control of the applicant.
- (d) If, during the provisional licensing period, the licensing agency discovers deficiencies which threaten the physical health, mental health, safety or welfare of the residents, the Department may exercise its discretion to institute administrative action or civil proceedings or to refer for criminal prosecution.
- (e) If the licensing agency determines after its review, specified in Section 87228, that the licensee does not meet the licensing requirements, the application shall be denied, as specified in Section 87340.
- (f) If the licensing agency denied the application for an initial license, the applicant may appeal the denial, as provided in Section 87340. Until the Director adopts a decision on the denial action, the facility shall be unlicensed.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.1515(b), 1569.17, 1569.18, 1569.20, 1569.21, 1569.22, 1569.23, and 1569.24, Health and Safety Code.

87233 TERM OF AN INITIAL OR RENEWAL LICENSE**87233**

Repeated by CDSS Manual Letter CCL 01-10, effective 6/29/01

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.19, Health and Safety Code.

87234 APPLICATION FOR RENEWAL OF LICENSE

87234

Repeated by CDSS Manual Letter CCL 01-10, effective 6/29/01.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15 and 1569.19, Health and Safety Code.

87235 RESUBMISSION OF APPLICATION

87235

- (a) A new application shall be made whenever there is any change in conditions or limitations described on the current license, including, but not limited to:
- (1) Any change in the location of the facility.
 - (2) Any change in the licensee.
 - (3) Failure to complete a new application within the required time limit.
 - (4) Any increase in capacity.
 - (A) Minor capacity increases may be granted following an evaluation by the licensing agency without the need for resubmission of an application.
 - (5) A corporate organizational change, including, but not limited to, change in structure, sale or transfer of the majority of stock, separating from a parent company, or merger with another company. The licensee shall notify the licensing agency of such organizational change within forty-eight (48) hours.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.3, 1569.10, 1569.11, 1569.15 and 1569.19, Health and Safety Code.

Article 4. Administrative Actions

87340 DENIAL OF INITIAL LICENSE**87340**

- (a) Except as specified in Section 87231(a), which provides that the applicant may be issued a provisional license based upon substantial compliance and immediate need, the licensing agency shall deny an application for an initial license if it is determined that the applicant is not in compliance with applicable law and regulations.
 - (b) The licensing agency shall have the authority to deny an application for an initial license if the applicant has failed to pay any civil penalty assessments pursuant to Section 87457 and in accordance with a final judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the licensing agency have been made.
 - (c) The licensing agency shall have the authority to deny an initial application if the applicant does not comply with Sections 87218(a)(2), (a)(9), and Health and Safety Code Sections 1569.1515(b) and 1569.50.
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HANDBOOK BEGINS HERE

(1) Health and Safety Code Section 1569.1515(b) reads:

"(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1569.16 and 1569.59."

(2) Health and Safety Code Section 1569.50 reads:

"The department may deny an application for a license or may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

"(a) Violation by the licensee of this chapter or of the rules and regulations adopted under this chapter.

"(b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted under this chapter.

"(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.

"(d) The conviction of a licensee, or other person mentioned in Section 1569.17 at any time before or during licensure, of a crime as defined in Section 1569.17.

HANDBOOK CONTINUES

87340 DENIAL OF INITIAL LICENSE (Continued)

87340

HANDBOOK CONTINUES

"(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients."

HANDBOOK ENDS HERE

- (d) If the application for an initial license is denied, the application processing fee shall be forfeited.
- (e) If the application for an initial license is denied, the licensing agency shall send a written notice of denial by certified mail. The notification shall inform the applicant of the denial; set forth the reasons for the denial; and advise the applicant of the right to appeal.
- (f) An applicant may appeal the denial of the application by sending a written notice of appeal to the licensing agency within 15 days of the postmark date of the denial notice.
- (g) The licensing agency shall, upon receipt of the notice of appeal, advise the applicant in writing of the appeal procedure.
- (h) The proceedings to review such denial shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.15, 1569.1515(b), 1569.17, 1569.185, 1569.20, 1569.21, 1569.22, 1569.23(a) and (e), 1569.30, 1569.485, 1569.49, 1569.50, 1569.51, 1569.52, and 1569.53, Health and Safety Code.

87341 DENIAL OF A RENEWAL LICENSE**87341**

Repeated by CDSS Manual Letter CCL 01-10, effective 6/29/01.

NOTE: Authority cited: **Section 1569.30**, Health and Safety Code. Reference: Sections **1569.15, 1569.19, 1569.20, 1569.22, 1569.23, 1569.30, 1569.50, 1569.51, 1569.52, and 1569.615(c)**, Health and Safety Code.

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